

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

BARCO, INC., ET AL.,) (
PLAINTIFFS,) (CIVIL ACTION NO.
) (2:23-CV-521-JRG-RSP
VS.) (MARSHALL, TEXAS
YEALINK (USA) NETWORK) (
TECHNOLOGY CO., LTD., ET AL.,) (MARCH 11, 2025
DEFENDANTS.) (3:03 P.M.

CLAIM CONSTRUCTION AND MOTION TO COMPEL HEARING

BEFORE THE HONORABLE ROY S. PAYNE

UNITED STATES MAGISTRATE JUDGE

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produced on a CAT system.)

03:03:46 1 COURT SECURITY OFFICER: All rise.

03:03:47 2 THE COURT: Good afternoon. Please be seated.

03:04:26 3 For the record, we're here for the claim
03:04:39 4 construction hearing, as well as a motion hearing, in
03:04:43 5 Barco, Inc. versus Yealink Network, et al., which is Case
03:04:49 6 No. 2:23-521 on our docket.

03:04:53 7 Would counsel state their appearances for the
03:04:55 8 record?

03:04:55 9 MR. GORHAM: Good afternoon, Your Honor. Tom
03:04:59 10 Gorham on behalf of the Plaintiffs. With me here today is
03:05:02 11 Erik Halverson, Josh Andrews, and Chris Centurelli.
03:05:08 12 Plaintiffs are ready to proceed, Your Honor.

03:05:09 13 THE COURT: Thank you, Mr. Gorham.

03:05:11 14 MR. GOTHIA: Good afternoon, Your Honor. Forrest
03:05:13 15 Gothia with Dentons US, here for the Yealink Defendants.
03:05:16 16 With me is my colleague, Stephen Yang, also with Dentons.

03:05:21 17 THE COURT: All right.

03:05:21 18 MR. GOTHIA: We are ready to proceed, Your Honor.

03:05:22 19 THE COURT: Thank you, Mr. Gothia.

03:05:26 20 MR. GOTHIA: Thank you.

03:05:27 21 THE COURT: Earlier this afternoon, we distributed
03:05:31 22 to counsel for both sides a set of preliminary
03:05:34 23 constructions of the disputed terms.

03:05:39 24 I want to emphasize that the intent of issuing
03:05:43 25 those preliminary constructions was not to prevent either

03:05:50 1 side from taking whatever position they believe is
03:05:52 2 appropriate on these terms. Rather, the intent is to allow
03:06:01 3 counsel to know where the Court is after the initial review
03:06:03 4 of the briefing and the record so that you can focus your
03:06:08 5 arguments most where you think the Court may have missed
03:06:11 6 the mark.

03:06:11 7 I do reserve the right to amend these preliminary
03:06:15 8 constructions and not uncommonly do amend them based on the
03:06:27 9 arguments in this hearing. So I hope they'll be taken in
03:06:30 10 that spirit.

03:06:31 11 Having said that, I will turn it over first to
03:06:34 12 counsel for Plaintiff.

03:06:35 13 MR. HALVERSON: Good afternoon, Your Honor. Erik
03:06:51 14 Halverson on behalf of Barco.

03:06:52 15 THE COURT: Good afternoon.

03:06:52 16 MR. HALVERSON: I'm going to handle the
03:06:55 17 "means-plus-function" terms, and then my associate,
03:06:57 18 Mr. Andrews, is going to handle the "peripheral device"
03:07:03 19 term, and we can dive on in.

03:07:06 20 So I believe you have in front of you, Your Honor,
03:07:08 21 our preliminary constructions -- excuse me, our slides for
03:07:13 22 today --

03:07:13 23 THE COURT: I do.

03:07:14 24 MR. HALVERSON: -- in a binder, and so I'll do my
03:07:17 25 best to reference the slide that we're on for the record as

03:07:19 1 we proceed.

03:07:19 2 So there are six patents at issue in this case.

03:07:25 3 They're directed towards presentation dongles and the

03:07:28 4 communication of information from one device to another

03:07:31 5 device through these dongles.

03:07:33 6 And I have here today what Barco's dongles are.

03:07:37 7 It's a little box with a button on it that the user uses

03:07:42 8 once they've attached the dongle to their laptop. And then

03:07:45 9 this device communicates with a base station up at the

03:07:48 10 front of the room, takes information from the laptop,

03:07:51 11 transmits it to a large display screen up at the front.

03:07:55 12 And when you've got multiple people in the room, one person

03:07:58 13 pushes the button to take control. When they're done

03:08:01 14 presenting, somebody else pushes the button to take

03:08:05 15 control.

03:08:05 16 And so it's through these dongles, you can have a

03:08:08 17 group presentation on a network within an office building,

03:08:12 18 a government building, or some other facility where you may

03:08:15 19 not want to necessarily grant access to the visitors to

03:08:21 20 access the local network or the Internet in that office.

03:08:24 21 So this has a lot of bearing at places like law

03:08:29 22 firms or government buildings where the employees who work

03:08:30 23 in that building may have access to secure files, but when

03:08:31 24 people come in and need to make a presentation, the IT

03:08:34 25 department of that building may not want to let the

03:08:36 1 visitors have access to the Internet. And so, instead,
03:08:44 2 what they use is these kinds of dongles.

03:08:47 3 So there are a few different ways that these
03:08:49 4 dongles could work. You could have software on them that
03:08:54 5 is installed on your laptop when you insert them. You
03:08:57 6 could have existing drivers on the machine, and those
03:09:02 7 existing drivers you can use to help facilitate the
03:09:06 8 transfer of information from one spot to another.

03:09:08 9 And so the claims that we're talking about today
03:09:10 10 as it relates to the "means-plus-function" terms are claims
03:09:14 11 where you're transferring information using existing
03:09:17 12 drivers, generic drivers such as USB, HDMI, VGA, display
03:09:23 13 ports, content that's already sitting on the user's laptop.
03:09:26 14 So you're not installing software from the dongle onto the
03:09:31 15 laptop, you're just using what the laptop already has.

03:09:35 16 And so before we dive into the claim construction
03:09:41 17 itself, I think it's important to kind of reorient where we
03:09:44 18 are in the case.

03:09:45 19 So Barco filed its initial complaint alleging
03:09:48 20 infringement of a number of claims. Yealink answered in
03:09:52 21 its answer. In its answer, it denied infringement. It
03:09:56 22 raised a number of affirmative defenses, and it raised a
03:10:00 23 number of counterclaims.

03:10:02 24 Yealink then filed an amended answer. In that
03:10:06 25 amended answer, they dropped their counterclaims, they

03:10:08 1 reduced the number of affirmative defenses, and they
03:10:10 2 admitted infringement of a number of claims. You see in
03:10:13 3 the middle column up on the screen -- or the second to
03:10:15 4 the -- from the right the claims that they have admitted to
03:10:18 5 infringe.

03:10:18 6 Now, why does this matter? Well, one of these
03:10:21 7 claims that they've admitted to infringe, Claim 1 of the
03:10:26 8 '676 patent, they're now arguing is indefinite. They have
03:10:28 9 no counterclaims. They've already admitted to the cause of
03:10:33 10 action. All that remains on the '676 patent is whether or
03:10:37 11 not -- or the amount of the damages that should be awarded,
03:10:40 12 the reasonable royalty -- at least the reasonable royalty
03:10:43 13 that Barco is entitled to. And our position is that
03:10:46 14 they've waived all right to any of their defenses because
03:10:50 15 they've admitted to that cause of action on the '676.

03:10:52 16 So we'll dive into the disputed terms today.
03:11:00 17 There are three "means for" terms, and there's one -- at
03:11:05 18 least one peripheral device. And depending on what counsel
03:11:09 19 for Yealink does, there might be one more term. We've
03:11:16 20 received an email saying that they were withdrawing the
03:11:19 21 "audio device" term from argument, and so we'll see what
03:11:21 22 happens when they get up.

03:11:23 23 So we're going to begin with the means for
03:11:26 24 function -- or the means for claims. And there are two
03:11:29 25 claims at issue for the means-plus-function claims in this

03:11:32 1 case, Claim 1 of the '002 patent and Claim 1 of the '676
03:11:36 2 patent.

03:11:39 3 Now, what is not at issue here? There is no
03:11:43 4 dispute about what the structure for these
03:11:46 5 means-plus-function claims is. There's no dispute that
03:11:50 6 means-plus-function governs, that these claims should be
03:11:54 7 construed in accordances with 112(f) or 112(6).

03:11:57 8 There's no dispute as to what the claim function
03:11:59 9 is.

03:11:59 10 There's also no dispute that exemplary disclosure
03:12:02 11 exists for what that structure is.

03:12:06 12 And so what is that dispute? Why are we here
03:12:08 13 today?

03:12:09 14 Well, we're here because Yealink contends that for
03:12:13 15 structure, where there is no generic processor identified,
03:12:17 16 that for some reason there needs to be an algorithm
03:12:19 17 identified.

03:12:21 18 And so we disagree that that's the case. But even
03:12:24 19 to the extent it is the case and there is a need for an
03:12:27 20 algorithm to be disclosed, there is a disclosure of a
03:12:30 21 sufficient algorithm in the specification.

03:12:32 22 And so as this Court has held, when there is
03:12:38 23 special-purpose hardware and it is disclosed in the
03:12:43 24 specification, there is no algorithm required. And so
03:12:45 25 don't forget, we see the structure -- we don't see the

03:12:50 1 structure because the clicker doesn't work -- but in the
03:12:53 2 green box, we see what that structure is. It's
03:12:56 3 special-purpose structure. We see in Yealink's proposal
03:12:59 4 that they agree that there is disclosure for that
03:13:02 5 structure.

03:13:02 6 And so what do we have in the specification that
03:13:05 7 is that structure? We have a picture of the product. We
03:13:08 8 have exactly what this is. This is the interface that is
03:13:13 9 the structure that the parties do not dispute performs the
03:13:16 10 function that the parties do not dispute, and this is
03:13:19 11 exactly what Figure 11 -- or, excuse me, Figure 10 of the
03:13:24 12 two patents depicts.

03:13:25 13 And so to the extent there is an algorithm
03:13:31 14 required -- and, again, we don't think that there is --
03:13:34 15 when there is some disclosure of an arguable algorithm,
03:13:38 16 what we have to look at is, is that disclosure in the
03:13:43 17 specification enough in the eyes of a person of skill in
03:13:46 18 the art to identify the sufficiency of it?

03:13:48 19 And so we contend that it is.

03:13:55 20 Dr. Almeroth, Yealink's expert in this case,
03:13:59 21 offers the opinion solely that there is no disclosure of
03:14:02 22 any algorithm, no disclosure of any structure or no
03:14:06 23 disclosure of even definitions as to what the generic
03:14:10 24 communication protocol provided by the preinstalled generic
03:14:14 25 driver is. And that's not quite what the test is.

03:14:17 1 The test is, is there an algorithm that performs
03:14:20 2 the function? The function is the audio communication
03:14:25 3 between the peripheral device, which is the laptop, and the
03:14:29 4 processing device -- excuse me, the peripheral device,
03:14:31 5 which is the dongle, the back of the dongle, the box part,
03:14:34 6 and the processing device which is a laptop.

03:14:38 7 Now, how do we provide for audio communication
03:14:41 8 from one device to the other? Through this interface,
03:14:45 9 through this wire, into this box. This box over here is
03:14:49 10 the peripheral device. The laptop that it plugs into is
03:14:53 11 the processing device.

03:14:54 12 Dr. Almeroth says there's no disclosure of any
03:14:59 13 algorithm. And so when we're talking about the sufficiency
03:15:02 14 of any disclosure in the specification, Dr. Almeroth offers
03:15:06 15 no opinion on whether or not what is in the specification
03:15:09 16 is sufficient. His sole opinion is that there is no
03:15:13 17 disclosure.

03:15:14 18 Now, Dr. Brogioli, Barco's expert in this matter,
03:15:20 19 evaluated the specification. He went through, and he found
03:15:23 20 what we contended to be an example flow in the figure --
03:15:27 21 and we'll put the figure up in just a second -- but an
03:15:30 22 example flow of how it is that this audio information or
03:15:35 23 data information or just general data is communicated from
03:15:38 24 the laptop to the dongle.

03:15:39 25 What he said is: Look, this disclosure in the

03:15:43 1 '002 tells the reader, it's simple. It's just the USB
03:15:46 2 interface, or it's generic, or it's the equivalent of that
03:15:49 3 USB interface. But that is what this claim is disclosing
03:15:52 4 as that process.

03:15:53 5 And so how does that do that? We've got a series
03:15:57 6 of drivers that are depicted in the figure and described in
03:16:01 7 the specification that communicate information through the
03:16:03 8 USB port of the laptop, through this USB receiver, through
03:16:10 9 this wire, and then into the dongle. And that's exactly
03:16:13 10 what we see in this flowchart of Figure 11.

03:16:17 11 And on this screen, we see a few examples of where
03:16:21 12 this USB driver and where this USB interface is depicted in
03:16:26 13 the specification.

03:16:27 14 Now, I want to draw your attention to the one on
03:16:29 15 the right where we see a first user action connects the
03:16:34 16 client processing device to the base node by inserting a
03:16:36 17 connection unit 47 into the relevant interface connector on
03:16:42 18 the processing device 31, e.g., the USB interface of the
03:16:47 19 dongle that's depicted in Figure 10.

03:16:49 20 We see some more exemplary disclosure of exactly
03:16:52 21 the same USB interface. In the '002 patent, Column 24,
03:16:59 22 Lines 4 to 11; Column 30, Lines 36 to 43; Column 31, Lines
03:17:07 23 29 to 42; and Column 32, Lines 22 to 26.

03:17:16 24 And the reason why this USB port or USB interface
03:17:19 25 is particularly at issue is this is the accused product.

03:17:23 1 This is the exact same USB interface, exact same flexible
03:17:28 2 cord, goes into their box.

03:17:30 3 So this claim construction exercise about
03:17:33 4 indefiniteness is all centered on whether or not the image
03:17:37 5 depicting this -- Barco's product is of sufficient
03:17:41 6 disclosure for Yealink's identically structured structure
03:17:45 7 that performs the same algorithm in its project -- product,
03:17:49 8 excuse me.

03:17:49 9 With that, Your Honor, I have nothing else unless
03:17:51 10 you have any questions on the "means for" limitations.

03:17:55 11 THE COURT: Not at this time, Mr. Halverson.
03:17:57 12 Thank you.

03:17:58 13 MR. HALVERSON: Mr. Andrews is going to handle
03:18:01 14 "the at least one peripheral" part of today's argument.

03:18:05 15 THE COURT: Although I would like to hear the
03:18:06 16 response first.

03:18:07 17 MR. HALVERSON: Okay.

03:18:08 18 THE COURT: Thank you.

03:18:19 19 MR. YANG: Good afternoon, Your Honor. Stephen
03:18:21 20 Yang on behalf of the Yealink Defendants.

03:18:24 21 THE COURT: Good afternoon, Mr. Yang.

03:18:30 22 MR. YANG: Your Honor, we do have some
03:18:30 23 demonstratives we prepared for today's hearing. If the
03:18:32 24 Court would like to see them, I can approach and hand them
03:18:33 25 up.

03:18:33 1 THE COURT: All right. That's fine.

03:18:55 2 MR. YANG: Thank you, Your Honor.

03:18:57 3 I have seen the Court's preliminary construction,
03:19:00 4 so instead of going through the entire argument, is there a
03:19:04 5 particular point the Court would like me -- would like me
03:19:07 6 to focus on and just explain better?

03:19:09 7 THE COURT: You know, I understand that the
03:19:11 8 dispute really has to do about whether an algorithm is
03:19:15 9 required.

03:19:15 10 MR. YANG: Yes, Your Honor.

03:19:17 11 THE COURT: It's my view of the case law that an
03:19:22 12 algorithm is not required if the structure is not a general
03:19:26 13 purpose computer or a processor. And I don't see anything
03:19:33 14 here that indicates that that's the case.

03:19:38 15 So to the extent you have a different view of it,
03:19:42 16 I'd like to hear it.

03:19:43 17 MR. YANG: Of course, Your Honor.

03:19:44 18 I think here, the structure, as my colleague,
03:19:50 19 Mr. Halverson, has pointed out, refers to this generic
03:19:57 20 communications protocol. It's an interface that uses a
03:20:00 21 generic communications protocol.

03:20:02 22 But according to the patents, there's a little bit
03:20:05 23 more to that, because a protocol is something that uses the
03:20:12 24 preinstalled generic drivers. Preinstalled generic drivers
03:20:18 25 provide this protocol, and what the protocol does is

03:20:22 1 communication between the processing device, which is a
03:20:25 2 computer, and a standard class of the peripheral devices,
03:20:29 3 including the dongle we have just seen.

03:20:31 4 Drivers, Your Honor, are software. Drivers are
03:20:36 5 not hardware. So here we do have a situation -- even
03:20:40 6 though the claims refer to this interface, this interface
03:20:44 7 has to use a generic communication protocol that is
03:20:49 8 provided by a generic -- a preinstalled generic driver.
03:20:54 9 That is what is claimed through this "means for" claim.

03:20:59 10 And because of that, Your Honor, it is our
03:21:02 11 position that there has to be a little bit more. Here you
03:21:07 12 do have a computer or processing device that is being
03:21:12 13 programmed to provide this function, the function of
03:21:15 14 communicating between processing device and the peripheral
03:21:19 15 device.

03:21:20 16 THE COURT: Would you contend that that's a
03:21:22 17 general purpose processor?

03:21:24 18 MR. YANG: I think the computer, before it had
03:21:28 19 this driver on it, before it was programmed to do this
03:21:31 20 function, yes, that is a general purpose computer. It
03:21:36 21 could be anybody's personal laptop. It could be a computer
03:21:40 22 running Mac. It could be running Android operating system.

03:21:44 23 But once it has --

03:21:45 24 THE COURT: That's what it's communicating with,
03:21:48 25 but that's not part of the structure of this particular

03:21:56 1 means, is it?

03:21:56 2 MR. YANG: Well, Your Honor, again, the means, as
03:22:01 3 defined in the claims, is a means for audio communication
03:22:04 4 that is an interface which uses a generic communications
03:22:08 5 protocol. So it's a little bit more than just hardware.

03:22:13 6 And Claim 1 of the '002 patent also talks about
03:22:19 7 just generic communication protocol. It also talks about
03:22:22 8 preinstalled generic drivers without using the "means for"
03:22:26 9 claiming, without using -- without triggering
03:22:31 10 Paragraph 112 -- Section 112(6).

03:22:33 11 And, Your Honor, in those instances, we do not
03:22:37 12 contend those are indefinite. But because here we do have
03:22:39 13 a 112(6) claim, we have a "means for" claim, our contention
03:22:45 14 is it has to do a little bit more than that because at the
03:22:48 15 end -- at the end of the day, it is in reality referring to
03:22:52 16 the piece of software. It is referring to this
03:22:56 17 preinstalled generic driver that does the function.

03:22:59 18 And because of that, there has to be an algorithm
03:23:04 19 or some kind of algorithm -- sufficient algorithm disclosed
03:23:07 20 for this preinstalled generic driver.

03:23:11 21 THE COURT: And what is your best case in support
03:23:15 22 of this particular term "requiring an algorithm"?

03:23:22 23 MR. YANG: Your Honor, I think we -- the best
03:23:24 24 case -- I guess the most analogous case, Your Honor, we
03:23:28 25 referred to Noah Systems from the Federal Circuit. And

03:23:32 1 there in Noah Systems, the Federal Circuit actually
03:23:34 2 rejected similar arguments made by Barco in this case.

03:23:39 3 But it's this principle that when you have -- when
03:23:45 4 the specification discloses a special purpose computer --
03:23:49 5 and by the way, special purpose computer, as explained in
03:23:53 6 Aristocrat, it's really a computer microprocessor
03:23:57 7 programmed to carry out an algorithm. In that case, there
03:24:02 8 has to be some algorithm disclosed.

03:24:06 9 And, Your Honor, if I may go back to Slide No. 9,
03:24:12 10 here, we do have that, a means for audio communication,
03:24:17 11 this interface that uses -- uses a generic communications
03:24:24 12 protocol. And, again, according to the patent -- the '002
03:24:28 13 patent's disclosure, that generic communication protocol is
03:24:32 14 provided by the preinstalled generic drivers.

03:24:37 15 So a POSA looking at this patent -- or a POSA
03:24:42 16 questioning what these generic drivers are, what the
03:24:47 17 algorithm is for the generic drivers, there's no disclosure
03:24:52 18 in the '002 patent.

03:24:57 19 THE COURT: All right. I understand your
03:24:59 20 argument.

03:25:00 21 MR. YANG: Thank you, Your Honor.

03:25:01 22 If I may respond to Barco's argument that there is
03:25:11 23 algorithm disclosed regardless in the '002 patent, and they
03:25:14 24 point to Figure 11 of the '002 patent. Your Honor, this
03:25:31 25 Figure 11 in the '002 patent is not actually an algorithm.

03:25:39 1 According to Barco's own expert who looked at this,
03:25:42 2 Dr. Brogioli, this figure, all it does is it shows a
03:25:48 3 high-level diagram that shows a flow of blocks within the
03:25:51 4 exemplary system.

03:25:55 5 So the question is what is the algorithm for the
03:26:00 6 means for audio communication? What is the algorithm for
03:26:05 7 the preinstalled generic driver? This Figure 11 is
03:26:10 8 actually not it. It does not do any -- it does not
03:26:14 9 disclose the algorithm. All it does is it shows how
03:26:19 10 information flows, what it's supposed to do. It's a
03:26:22 11 block -- it's a figure of just components. It does not
03:26:26 12 provide any algorithm.

03:26:27 13 In fact, when Dr. Brogioli looked at this figure,
03:26:36 14 he testified he was actually not sure exactly what it
03:26:39 15 discloses. He was speculating during his deposition. You
03:26:46 16 know, he said: Maybe that part, as well. It's not clear.

03:26:48 17 So to him, this is actually not clear.

03:26:51 18 One more thing, too. Dr. Brogioli, when he looked
03:26:54 19 at the '002 patent, when he looked at these claims, he
03:26:57 20 actually did not apply Section 112(6). He did not have
03:27:04 21 an opinion whether these are means-plus-function claims.
03:27:10 22 He testified that he just looked for some structure, and
03:27:13 23 then he found some structure. That's all he was asked to
03:27:16 24 do.

03:27:16 25 In addition to that, Your Honor, if I may, at the

03:27:26 1 end of the day, if there's any structure -- sorry, if
03:27:29 2 there's any algorithm, what is clear is that a POSA has to
03:27:33 3 look outside the patent. The POSA has to go find what that
03:27:43 4 algorithm is.

03:27:43 5 And, Your Honor, if I might go back to Slide No.
03:27:46 6 15 of our demonstratives.

03:27:47 7 Again, these are testimony from Dr. Brogioli.
03:27:50 8 When asked, are there any APIs, are there any algorithm
03:27:55 9 identified in the patent, Dr. Brogioli testified: Well,
03:27:59 10 the reader knows this is USB. So he has to -- he or she
03:28:08 11 has to go look to see how to do that, how to implement
03:28:12 12 that. The user has to look online. The user has to go
03:28:15 13 find the right documentation.

03:28:17 14 And, finally, I want to add. We've heard many
03:28:22 15 times about this USB. This is just USB. It is simple.

03:28:26 16 But even within USB, Dr. Brogioli testified that
03:28:30 17 there are different versions of a USB. Each version is
03:28:35 18 different. In other words, even if a POSA knows this is
03:28:39 19 USB, he or she has to go online to figure out which version
03:28:43 20 of the USB that is, and then figure out what the driver
03:28:51 21 is -- what the appropriate drivers are for the USB, what
03:28:52 22 the appropriate algorithm is.

03:28:54 23 On top of that, even though we hear about USB, the
03:28:59 24 '002 patent, the disclosure regarding the means for audio
03:29:04 25 communications, means for data communication is much

03:29:05 1 broader than USB. It claims many more different
03:29:10 2 interfaces, many more different USBs -- well, structures
03:29:15 3 similar to USB. And there is no disclosure whatsoever in
03:29:20 4 the specification for those other aspects.

03:29:22 5 In light of all this, Your Honor, it is our
03:29:28 6 argument that there has to be some algorithm disclosed in
03:29:33 7 the specification. Otherwise, what we're looking at is
03:29:36 8 just a black box. We know the '002 patent improved upon
03:29:41 9 the prior art by providing this function of communication,
03:29:46 10 but what is not clear from the specification is how. It is
03:29:52 11 not clear exactly what it's doing this function -- exactly
03:29:58 12 what the algorithm -- the algorithm is.

03:30:02 13 So, Your Honor, I'll end there.

03:30:04 14 THE COURT: All right. Thank you, Mr. Yang.

03:30:07 15 MR. YANG: Thank you, Your Honor.

03:30:08 16 THE COURT: Mr. Andrews, do you want to address
03:30:25 17 the next term?

03:30:27 18 MR. ANDREWS: Yes. Thank you, Your Honor.

03:30:28 19 Good afternoon, Your Honor.

03:30:40 20 So the term I will be arguing is "the at least one
03:30:44 21 peripheral device." And just to orient your -- on this
03:30:49 22 issue, Yealink has not proposed any construction on this
03:30:52 23 term. They have just proposed that this term is
03:30:56 24 indefinite. And we are proposing that the claim should be
03:30:59 25 construed with its plain and ordinary meaning.

03:31:01 1 So on Slide 20, you will see that the claim --
03:31:09 2 Claim 1 of the '103 patent is listed. On Claim 1, you will
03:31:13 3 read at the end of the claim in yellow highlight "the at
03:31:16 4 least one peripheral device."

03:31:18 5 Claim 1 of the '103 patent is directed towards a
03:31:21 6 computer peripheral device, and "the at least one
03:31:25 7 peripheral device" is referencing the previously mentioned
03:31:29 8 computer peripheral device.

03:31:30 9 So while the claim language is not the exact same,
03:31:34 10 it would still be clear to a person of skill in the art
03:31:38 11 what is being referenced by "the at least one peripheral
03:31:41 12 device." For example, in patent law, it's well-understood
03:31:45 13 that "a" refers to one or more in the same way that "the at
03:31:49 14 least one" would refer to one or more of the said element.

03:31:54 15 Additionally, while "computer" is in the preamble
03:31:58 16 and other references to the computer peripheral device, it
03:32:01 17 would still be clear to a person of skill that "the at
03:32:06 18 least one peripheral device" references a computer
03:32:08 19 peripheral device as there is no other mention of an
03:32:12 20 alternative peripheral device in Claim 1.

03:32:15 21 Additionally, this interpretation is supported by
03:32:19 22 the prosecution history of the '103 patent. For example,
03:32:26 23 Claim 23 of the pending application on March 7th, 2019 was
03:32:33 24 amended in response to this Office Action to add the
03:32:37 25 limitation shown at the bottom of the screen in blue, which

03:32:44 1 added a reference to "the at least one peripheral device."
03:32:46 2 And in this context, reference to "the at least one
03:32:48 3 peripheral device" makes sense in that Claim 23 had an
03:32:52 4 earlier limitation that referenced "at least one peripheral
03:32:54 5 device."

03:32:55 6 And when making this amendment in the same Office
03:33:01 7 Action Response, the prosecuting attorney added the same
03:33:05 8 limitations shown in blue highlight to the then pending
03:33:09 9 Claim 29, which eventually issues as Claim 1 in the '103
03:33:15 10 patent.

03:33:15 11 And in making this amendment, the prosecuting
03:33:21 12 counsel did not adjust the language to -- of "the at least
03:33:26 13 one peripheral device" to match the preamble of Claim 29.
03:33:29 14 However, it would still be clear to a person of skill in
03:33:32 15 the art that this limitation is meant to reference the
03:33:34 16 earlier stated "a computer peripheral device." And,
03:33:39 17 therefore, based on both the plain reading of the claim
03:33:42 18 limitations and also the prosecution history, it would be
03:33:44 19 clear to a person of skill what is being claimed by "the at
03:33:48 20 least one peripheral device."

03:33:49 21 If you don't have any questions, I will...

03:33:57 22 THE COURT: All right. Not at the moment,
03:33:59 23 Mr. Andrews. Thank you.

03:34:00 24 MR. ANDREWS: Okay. And additionally, it was our
03:34:01 25 understanding that "the audio device" would not be argued

03:34:05 1 by opposing counsel today, but to the extent that that
03:34:08 2 issue is raised, we are prepared to discuss that, as well.
03:34:11 3 Thank you.

03:34:11 4 THE COURT: All right.

03:34:24 5 MR. YANG: Your Honor, on the "peripheral device"
03:34:26 6 term, again, I've seen the Court's preliminary
03:34:30 7 construction. And to make this hearing more efficient, is
03:34:32 8 there any particular question the Court -- or issue the
03:34:37 9 Court would like me to focus on?

03:34:38 10 THE COURT: Well, obviously, I've indicated in the
03:34:41 11 preliminary what I think the construction of that term
03:34:48 12 should be. If you have argument that you want to offer
03:34:54 13 against that, I'm happy to consider it, but I have reviewed
03:35:01 14 your brief in arriving at this preliminary construction.

03:35:03 15 MR. YANG: I understand, Your Honor.

03:35:05 16 I think just to -- just real quick, I don't think
03:35:09 17 there's any dispute that as this claim in the '103 patent
03:35:13 18 is drafted right now, there is confusion as to the term
03:35:18 19 "peripheral device." It's not clear whether it's referring
03:35:21 20 to the same peripheral device in Claim 1, or is it
03:35:23 21 referring to other peripheral devices outside of the device
03:35:28 22 in Claim 1?

03:35:29 23 I don't think --

03:35:30 24 THE COURT: That would be an unusual construction
03:35:35 25 to say that that term is referring to otherwise

03:35:41 1 unidentified devices.

03:35:44 2 MR. YANG: Well, Your Honor, the way Claim 1 of
03:35:47 3 the '0 -- '103 patent is drafted, it's talking about this
03:35:51 4 peripheral device like the one we've seen earlier from
03:35:55 5 Mr. Halverson. This peripheral device has a light, a
03:35:58 6 visual indicator. And what it does is it lights up -- it
03:36:03 7 sends indication to the user when there's content
03:36:08 8 transmitted from the laptop to which the peripheral
03:36:12 9 device -- the dongle is connected. It's telling the user
03:36:17 10 you are now transmitting.

03:36:17 11 But Claim 1 does talk about this meeting room
03:36:23 12 system, like the one we've seen in Figure 1A up here on
03:36:30 13 Slide No. 35. And in that Slide No. 35, we've actually
03:36:34 14 annotated Figure 1A. The orange pieces, Your Honor, are
03:36:39 15 these peripheral devices.

03:36:40 16 And I think the confusion it comes down to, if
03:36:44 17 it's not clear that the peripheral device at the end of
03:36:48 18 Claim 1 is referring to the same peripheral device of Claim
03:36:52 19 1, it is possible to have a scenario where when somebody
03:36:58 20 else's peripheral device is transmitting content to the
03:37:03 21 communications network, then the user's peripheral device
03:37:07 22 is sending a visual indication and it's lighting up.

03:37:11 23 And that's what Dr. Almeroth opined to in his
03:37:15 24 declaration.

03:37:17 25 THE COURT: Does that really make any sense?

03:37:20 1 MR. YANG: I agree it's unusual, Your Honor. No,
03:37:23 2 I think it does make sense because, again, if it's not
03:37:27 3 clear that the visual indicator of the peripheral device,
03:37:34 4 again, at the end of Claim 1, it's not clear what that
03:37:38 5 peripheral device is referring to, it is possible to have a
03:37:41 6 scenario where the user's peripheral device is lighting up
03:37:46 7 when somebody else is transmitting onto the network.

03:37:49 8 And, again, this is a meeting room setup. There
03:37:52 9 could be many users looking at the same screen. And, of
03:37:57 10 course, one user is sharing content.

03:37:59 11 THE COURT: How would it even be helpful to the
03:38:02 12 user for the light to come on when some other device is
03:38:09 13 transmitting?

03:38:10 14 MR. YANG: Well, I think, Your Honor, that -- I
03:38:15 15 would hate to speculate on behalf of any user, but I do see
03:38:19 16 some using that, indicating to the user that somebody
03:38:25 17 else's content is being shared. Again, it's a meeting room
03:38:31 18 setup. It could be many users in the same room. It could
03:38:34 19 be users from elsewhere joining remotely.

03:38:37 20 But, Your Honor, I could see some function. I
03:38:39 21 agree it's perhaps a little unusual, but I think there is
03:38:44 22 support in the specification that there could be a scenario
03:38:46 23 where you have a visual indication that either the user or
03:38:52 24 somebody else is sharing content. It could be a situation
03:38:58 25 where a user who is not the meeting host is sharing content

03:39:01 1 and there has to be some indication to let another user
03:39:05 2 know. And, of course, when a user him or herself is
03:39:09 3 sharing content, then there's a visual indication.

03:39:13 4 I guess in that sense, Your Honor, it makes as
03:39:15 5 much sense to let the user know that he or she is sharing
03:39:20 6 content herself because presumably, they would know.

03:39:23 7 But, again, the way the claim is drafted, there's
03:39:26 8 a visual indication, but what is not clear is when that
03:39:33 9 visual indication is active.

03:39:41 10 THE COURT: All right.

03:39:42 11 MR. YANG: Okay. Again, that -- those two
03:39:44 12 possible scenarios -- Yealink's expert, Dr. Almeroth,
03:39:49 13 explained that those are two possible scenarios. And, of
03:39:52 14 course, because of that, there's an issue as to when
03:39:55 15 infringement occurs.

03:39:57 16 We have heard from Barco that this is at the end
03:40:01 17 of the day a mistake. A POSA would know that's a mistake.

03:40:05 18 Your Honor, it's not so clear that it is. One,
03:40:10 19 Dr. Almeroth looked at the claims, he looked at the patent
03:40:13 20 prosecution, and he opined that there still could be two
03:40:18 21 scenarios.

03:40:18 22 Barco's expert, Dr. Brogioli, did not, in his
03:40:22 23 opinion, analyze the prosecution history. In his opinion,
03:40:27 24 Dr. Brogioli's -- in his declaration, Dr. Brogioli's
03:40:31 25 opinions are rather conclusory. He said: Well, I looked

03:40:32 1 at the claims, along with the specification. It is clear
03:40:38 2 to me that it's referring to the computer peripheral
03:40:40 3 device, but there is no analysis.

03:40:42 4 What Barco is asking this Court to do, realizing
03:40:46 5 there is an issue with the claim, is to rewrite the claim
03:40:51 6 for Barco. This Court, of course, has the authority to do
03:40:55 7 that, but the Court can correct the patent only if the
03:41:04 8 correction is not subject to reasonable debate and the
03:41:06 9 prosecution history does not suggest a different
03:41:08 10 interpretation.

03:41:09 11 And, Your Honor, we submit this standard is not
03:41:12 12 being met here because there is reasonable debate. Two
03:41:18 13 POSA looked at -- two POSAs looked at the claims. One of
03:41:21 14 them looked at the prosecution history, and there is
03:41:23 15 debate whether this is indefinite, whether the claim is not
03:41:27 16 clear.

03:41:28 17 And, two, if we looked at the prosecution history
03:41:31 18 itself, Your Honor, if we looked at -- Barco wants us to
03:41:34 19 look at original Claim 23, which was later canceled, and,
03:41:42 20 Your Honor, Claim 29, which became granted Claim No. 1.

03:41:46 21 And I'm on Slides 39 and 40.

03:41:49 22 But if we do look at these two claims, Your Honor,
03:41:55 23 we see there is a difference in scope. Claim 23, which was
03:42:00 24 later canceled, is directed to this electronic meeting tool
03:42:04 25 that recites a communication network. It talks about

03:42:08 1 multiple peripheral devices.

03:42:12 2 So, Your Honor, in that sense, it is possible that
03:42:16 3 Claim 23 at the time did intend to have multiple peripheral
03:42:21 4 devices and it did intend to distinguish other people's
03:42:27 5 peripheral devices from the user's peripheral device.

03:42:30 6 Claim 29, on the other hand, which did become
03:42:34 7 Claim 1, is really just about the computer peripheral
03:42:42 8 device itself for the user.

03:42:45 9 Now, I do not disagree that we see the limitations
03:42:49 10 being added in the same Office Action, but standing here
03:42:55 11 today we do not know why they were added. And it's not
03:43:01 12 clear that it was added -- this just was all a mistake.

03:43:07 13 And, Your Honor, we submit that in a situation
03:43:12 14 like this, instead of having the Court correct the patent
03:43:15 15 on Barco's behalf, what should be done -- what should --
03:43:19 16 what is more -- or more appropriate is for Barco -- is for
03:43:24 17 the patentee to go to the Patent Office. The Patent Office
03:43:29 18 can correct the patent through a certification of
03:43:32 19 correction. That hasn't been done. But the Patent Office
03:43:35 20 can look at the claim -- can look at the prosecution
03:43:38 21 history and make the judgment whether there should be a
03:43:43 22 correction, whether there was just an obvious mistake.

03:43:46 23 And, Your Honor, if I may go back to your earlier
03:43:51 24 question, how does it make sense that the light is shown
03:43:57 25 that somebody else is sharing? Another explanation is if

03:44:01 1 somebody else is sharing content and the light is on, it is
03:44:06 2 telling the user maybe do not override, maybe do not try to
03:44:11 3 share at the same time.

03:44:12 4 Again, these are all just possible scenarios. I'm
03:44:14 5 not an expert in the field, but the way the claims are
03:44:18 6 drafted, that is a possibility. Dr. Almeroth looked at
03:44:23 7 this. He opined those are all possibilities, and that's
03:44:27 8 what leads to this indefiniteness issue.

03:44:32 9 THE COURT: All right.

03:44:33 10 MR. YANG: And, Your Honor, if I may just address
03:44:36 11 "the audio device" term.

03:44:40 12 Earlier this morning, in attempt to streamline the
03:44:45 13 hearing, Yealink did inform Barco that it no longer intends
03:44:48 14 to argue this term at the hearing. So for that term, Your
03:44:53 15 Honor, we would just like to submit our position on the
03:44:56 16 papers.

03:44:57 17 THE COURT: All right. Thank you, Mr. Yang.

03:44:59 18 MR. YANG: Thank you, Your Honor.

03:44:59 19 MR. HALVERSON: May I respond to that briefly?

03:45:03 20 THE COURT: Yes.

03:45:03 21 MR. HALVERSON: So the email from Mr. Yang this
03:45:07 22 morning doesn't say that they're going to rest on their
03:45:11 23 papers. It says -- pardon me one second -- it says, and I
03:45:25 24 quote, Yealink will no longer ask the Court to construe
03:45:29 25 "the audio device" term from Claim 2 of the '237 patent and

03:45:33 1 will propose that the Court accord this term its plain and
03:45:37 2 ordinary meaning. We will inform the Court at the start of
03:45:40 3 the hearing.

03:45:42 4 We're happy to argue the term this morning -- or
03:45:45 5 this afternoon, but that representation from Yealink is
03:45:47 6 pretty clear is what they intended to do.

03:45:52 7 THE COURT: Mr. Yang, do you have a different
03:45:55 8 understanding of what you agreed to this morning?

03:46:01 9 MR. YANG: No, Your Honor. That's -- that's what
03:46:03 10 we offered. Again, we're trying to just streamline the
03:46:08 11 hearing, but we're -- Your Honor, at the end of the day,
03:46:11 12 the reason we did that is we're looking at "the audio
03:46:15 13 device" in a dependent claim of the '237 patent.

03:46:20 14 THE COURT: I understand --

03:46:21 15 MR. YANG: We're fine -- we're fine with just
03:46:23 16 going with plain and ordinary meaning. That was our
03:46:26 17 intention to streamline the process, Your Honor.

03:46:27 18 THE COURT: All right. Well, I give you credit
03:46:31 19 for standing by your agreement.

03:46:33 20 MR. YANG: That was our intention, Your Honor. So
03:46:36 21 I did not mean to make this more complicated. But if the
03:46:41 22 Court has already reached a construction, that was my
03:46:45 23 intention. But we're fine with just going with plain and
03:46:48 24 ordinary meaning.

03:46:48 25 THE COURT: All right. I will note that agreement

03:46:49 1 for the record.

03:46:52 2 MR. HALVERSON: Thank you, Your Honor.

03:46:52 3 THE COURT: And I would tell you, Mr. Halverson,
03:46:56 4 that it would be preferable if you would notify the Court
03:47:00 5 when you reach agreements withdrawing terms. You might
03:47:04 6 avoid issues like this.

03:47:06 7 MR. HALVERSON: Understood, Your Honor.

03:47:07 8 THE COURT: All right. We also have the motion to
03:47:17 9 compel. And I guess I need the Plaintiff to tell me what
03:47:23 10 is still at issue on that motion.

03:47:25 11 MR. HALVERSON: So, Your Honor, we moved for a
03:47:46 12 motion to compel -- or an order to compel on six different
03:47:49 13 topics, technical documents on design and development, U.S.
03:47:54 14 sales data, license agreements, market research, source
03:47:58 15 code, and interrogatories on non-infringement.

03:48:03 16 Yealink has represented that they will be
03:48:05 17 providing the sales data, although there has not been a --
03:48:10 18 in a tabular summary form that has not come yet. They did
03:48:16 19 say that it was coming today.

03:48:19 20 They have represented, as well, that they have
03:48:22 21 produced the entirety of the license agreement, the HDMI
03:48:25 22 agreement. And so based on those two representations, I
03:48:28 23 don't know that we need to argue either one of those.
03:48:32 24 However, I do think that the remaining four topics are
03:48:37 25 still ripe for discussion today.

03:48:51 1 THE COURT: Go ahead and address the first topic
03:48:53 2 then.

03:48:54 3 MR. HALVERSON: So the technical documents on
03:48:57 4 design and development of the accused products, we were
03:48:59 5 here last November before Your Honor discussing the exact
03:49:02 6 same subject matter. Yealink was ordered to provide
03:49:07 7 documents describing how the products came to be developed
03:49:10 8 and how they operate. All we've gotten has been a
03:49:14 9 collection of testing documents from third-party testers.
03:49:18 10 We've gotten no documents describing the development
03:49:21 11 process, no documents describing the operation.

03:49:27 12 And so at this late stage in discovery, it's
03:49:30 13 becoming a little bit troubling that we're still not
03:49:33 14 getting access to how it is that these products came to be
03:49:36 15 or how it is that they operate.

03:49:37 16 And I think this topic goes hand-in-hand with the
03:49:41 17 source code topic which has been part of our infringement
03:49:46 18 contentions since March of last year and still has not been
03:49:51 19 provided.

03:49:51 20 THE COURT: As I understand it, one of the primary
03:49:55 21 arguments that the Defendants are relying upon has to do
03:50:00 22 with a stipulation of infringement.

03:50:05 23 What is the relevance of these technical documents
03:50:12 24 in view of that stipulation?

03:50:14 25 MR. HALVERSON: Well, so thus far, there is no

03:50:17 1 stipulation. And so I think the first point there is as we
03:50:21 2 sit here today, the scope of the case doesn't have that
03:50:23 3 kind of a stipulation in it.

03:50:25 4 And so even if a stipulation to that effect were
03:50:28 5 to be reached between the parties, how the devices came to
03:50:33 6 be designed when we know based on Yealink's interrogatory
03:50:37 7 responses that Yealink was aware of Barco's Clickshare
03:50:42 8 product, when they were designing the accused products,
03:50:46 9 which, again, have same interfaces, same flexible dongles,
03:50:52 10 same back -- or the flexible connectors, same back ends
03:50:57 11 with buttons that light up. In view of the admission that
03:51:00 12 they were aware of those products while they were designing
03:51:02 13 those, that information is still relevant to at least the
03:51:05 14 damages case under Georgia-Pacific 9 and I think it's 11,
03:51:10 15 as well as to the willfulness case as it relates to
03:51:16 16 Yealink's copying of our product.

03:51:17 17 THE COURT: So tell me the relevance to the
03:51:20 18 damages case.

03:51:21 19 MR. HALVERSON: So as I recall, Georgia-Pacific
03:51:27 20 Factor 9 refers to how the accused product is an
03:51:32 21 advancement over the then existing state of the art.

03:51:35 22 And then Georgia-Pacific Factor No. 11 relates
03:51:38 23 to -- and this is a rough paraphrase, but effectively any
03:51:44 24 evidence of copying of a patented product would go into
03:51:48 25 that Georgia-Pacific factor.

03:51:50 1 And so to the extent we get access to these
03:51:53 2 documents and they explain that the way that Yealink
03:51:55 3 arrived at this was they took this and they reverse
03:52:00 4 engineered it, that's wildly relevant to the damages that
03:52:03 5 should be afforded Barco for Yealink's infringement.

03:52:09 6 THE COURT: The first Georgia-Pacific factor you
03:52:14 7 referred to may have been 9. That would be about the
03:52:17 8 claimed invention, not the accused device, wouldn't it?

03:52:21 9 MR. HALVERSON: Pardon me, Your Honor.

03:52:23 10 THE COURT: All right.

03:52:23 11 MR. HALVERSON: The utility and advantages of the
03:52:55 12 patent property over the old modes and devices. And so
03:52:59 13 traditionally, yes, I would agree that it would be how does
03:53:02 14 the claim separate itself from what else is there.

03:53:04 15 But to the extent they copied, I would argue that
03:53:10 16 the patent property would encompass the identity of
03:53:17 17 functionality between the copied product and the patented
03:53:23 18 product.

03:53:23 19 THE COURT: And do you have indications that there
03:53:25 20 was actual copying by Yealink?

03:53:27 21 MR. HALVERSON: We have an interrogatory response
03:53:29 22 that confirms that Yealink -- Yealink, excuse me, was aware
03:53:33 23 of the Clickshare while they were developing their product.
03:53:37 24 We have evidence that Yealink was part of Barco's technical
03:53:45 25 alliance program, which means they had access to Barco's

03:53:51 1 products, and whether or not -- or, excuse me, the fact
03:53:54 2 that we don't have additional documents that support the
03:53:56 3 copying is exactly why we're here today. We need those
03:53:59 4 documents to figure out whether or not that's there.

03:54:08 5 THE COURT: All right. And can you be -- well,
03:54:16 6 maybe you can't be more specific about it. You're just
03:54:20 7 asking for an order that they produce documents regarding
03:54:26 8 development and operation of the accused products?

03:54:29 9 MR. HALVERSON: That's what the portion of A is in
03:54:39 10 our brief. And I think as a subset of that, it would also
03:54:43 11 include documents that reference Barco and the Clickshare
03:54:48 12 product that were part of Yealink at that time.

03:54:51 13 Now, Yealink has represented to Barco that they
03:54:54 14 don't have any of those documents, but they have also
03:54:57 15 represented to Barco that they were aware of Barco's
03:55:01 16 Clickshare product. And so what we're struggling with is
03:55:04 17 how do we reconcile their statements that, yes, while we
03:55:07 18 were developing our product, we knew exactly what you were
03:55:10 19 doing, Barco, but we have nothing that refers to Barco in
03:55:14 20 any of our documents.

03:55:17 21 THE COURT: Whether they knew exactly what you
03:55:21 22 were doing or whether they were aware of you are two
03:55:24 23 somewhat different things.

03:55:25 24 MR. HALVERSON: Yes, Your Honor.

03:55:27 25 THE COURT: All right. Well, let me hear the

03:55:30 1 response on these technical documents, and then we'll move
03:55:32 2 on to the other portions of the motion.

03:55:42 3 MR. YANG: Your Honor, on the technical documents,
03:55:53 4 Barco -- by the way, this was not made clear to us until
03:55:58 5 the meet and confer after the motion has been filed on
03:56:01 6 February 20th.

03:56:02 7 Barco seems to believe that Yealink has just
03:56:05 8 copied its products, copied everything. And this
03:56:10 9 interrogatory that Mr. Halverson keeps referring to, Your
03:56:14 10 Honor, Interrogatory No. 8, it asks whether -- specifically
03:56:18 11 whether Yealink was aware of Barco's Clickshare products,
03:56:21 12 which is a whole family of products, during development.

03:56:26 13 The answer is yes, Yealink was aware of it. Barco
03:56:30 14 is a big company. Yealink is a big company. Yealink is
03:56:30 15 aware of these products. It's aware of a lot of products.
03:56:36 16 All we did, Your Honor, was say that Yealink was aware of
03:56:38 17 it.

03:56:39 18 There is a big logical jump from that to Yealink
03:56:44 19 has copied its products.

03:56:46 20 We've also heard that these documents are relevant
03:56:50 21 to willful infringement. Your Honor, Yealink developed its
03:56:55 22 dongle product WPP20 in 2017, 2018, years before the
03:57:01 23 patents came around, and I think five or six years before
03:57:06 24 Barco has even marked its products with the patents.

03:57:12 25 On top of that, Your Honor, this issue of whether

03:57:15 1 Yealink has documents referencing Barco, Barco's patents,
03:57:19 2 Barco's patent applications, the answer is we've already
03:57:24 3 told Barco this. The answer is no. Yealink conducted a
03:57:28 4 search. It does not have these documents.

03:57:30 5 Your Honor, I personally was at Yealink last week.
03:57:35 6 I sat down with the relevant people at Yealink. I looked
03:57:39 7 at their documents. And, Your Honor, we did not find any
03:57:46 8 documents that talk about Barco, talk about copying Barco,
03:57:53 9 documents that talk about patent numbers, Barco's patent
03:57:54 10 application numbers. It just -- it is not -- it's just --
03:57:58 11 there is no basis to insist that Yealink somehow copied
03:58:02 12 Barco's products, and there must be evidence that Yealink
03:58:07 13 copied Barco's products.

03:58:08 14 THE COURT: Well, that -- they are seeking
03:58:11 15 evidence on the development of Yealink's products, which
03:58:18 16 would be the kind of evidence you're talking about.

03:58:21 17 MR. YANG: Right, Your Honor. That's my next
03:58:23 18 point.

03:58:24 19 On the development, we were here before Your Honor
03:58:28 20 on November 15th. This Court issued an order to produce
03:58:32 21 some development documents. Your Honor, we did. We
03:58:35 22 produced -- there were third-party testing documents. We
03:58:42 23 also produced documents that describe the time log of
03:58:44 24 Yealink's developments.

03:58:45 25 Now, on November 15th, this Court has also

03:58:49 1 informed us, look, produce the documents, produce
03:58:54 2 documents -- what we believe to be sufficient. If Barco
03:58:56 3 has an issue, if Barco finds any deficiencies, we can work
03:59:03 4 it out.

03:59:03 5 THE COURT: That was primarily on the operation
03:59:05 6 side of things, sufficient to show the operation, yes?

03:59:10 7 MR. YANG: Your Honor, my point is for two months
03:59:13 8 before Barco brought this motion, we have not heard
03:59:16 9 anything about any deficiency. And when we received a
03:59:18 10 letter on January 29th, Yealink was away on break. And we
03:59:24 11 told Barco this.

03:59:26 12 But we got Yealink's people to come back to the
03:59:28 13 office, and we tried to look for some of the documents that
03:59:31 14 Barco is asking for. We asked Barco to be more specific,
03:59:36 15 to tell us what they're looking for. And, Your Honor, the
03:59:41 16 Court mentioned this agreement, this stipulation. This was
03:59:45 17 in our briefing, as well. We thought we had reached an
03:59:49 18 agreement with Barco on further claims to which had
03:59:56 19 admitted infringement that would effectively end most of
03:59:59 20 technical discovery, including the issues that we now see
04:00:02 21 in Barco's motion. We thought that we had reached that
04:00:05 22 agreement, and then we were surprised to see a motion to
04:00:09 23 compel.

04:00:09 24 But regardless, we did produce development
04:00:12 25 documents. And if there are more that Barco insists are

04:00:17 1 missing and that they need, we're happy to look and try to
04:00:20 2 get those documents to Barco. That has never been an
04:00:23 3 issue.

04:00:23 4 THE COURT: Two things, Mr. Yang.

04:00:24 5 MR. YANG: Yes.

04:00:25 6 THE COURT: First off, have you stipulated to
04:00:28 7 infringement as you discuss in your briefing?

04:00:32 8 MR. YANG: So we reached an agreement -- now, it's
04:00:36 9 a stipulation that is with Barco. We sent our agreement to
04:00:42 10 Barco.

04:00:44 11 Your Honor, just a little more background. The
04:00:45 12 agreement was Yealink will admit to infringement of one
04:00:49 13 dependent claim from four of the patents so long as those
04:00:52 14 dependent claims were not challenged. The parties have
04:00:56 15 been discussing this for a period of time starting in
04:01:00 16 December through January. And on February 11th, Your
04:01:03 17 Honor, I thought we had reached an agreement.

04:01:06 18 We sent the agreement to Barco. Again, we are
04:01:10 19 happy to provide copies of the emails to Your Honor. But
04:01:14 20 the point is Barco has now come back. They sent us
04:01:17 21 additional terms. They want us to admit to copying Barco's
04:01:23 22 products. They want Yealink to agree to treble damages.
04:01:28 23 They want Yealink to admit to disjoin, Your Honor, evidence
04:01:32 24 of Yealink's copying.

04:01:36 25 THE COURT: So there is no stipulation is what I'm

04:01:38 1 hearing; is that right?

04:01:39 2 MR. YANG: One more thing, Your Honor. Two days
04:01:41 3 ago, we sent a proposed third amended answer to Barco.

04:01:49 4 Now, last time we were before this Court, we made
04:01:51 5 it clear that Yealink tried to streamline this case. It's
04:01:55 6 already withdrawn the dongle product from the U.S. market.
04:01:57 7 It wishes to proceed the damages case because it does not
04:02:01 8 really see the point of engaging in additional fact
04:02:05 9 discovery when it's not necessary.

04:02:06 10 Two days ago, Your Honor, we sent a draft answer
04:02:09 11 to Barco -- third amended answer. And in this answer, Your
04:02:14 12 Honor, Yealink is agreeing to admit to infringement of all
04:02:18 13 asserted claims and agreeing to admit to the infringement
04:02:23 14 as contended by Barco, including all the accused products,
04:02:28 15 again, as contended by Barco.

04:02:29 16 We're waiting for Barco to get back to us on
04:02:32 17 whether they have any objections, knowing that Yealink
04:02:37 18 needs to move for leave to amend its answer. But Yealink
04:02:41 19 is prepared to do that.

04:02:42 20 We have copies of this third amended answer
04:02:46 21 available if the Court wishes to see, and we're happy to
04:02:49 22 file this, if there is leave, as soon as today.

04:02:54 23 But, Your Honor, we tried to reach a stipulation.
04:02:57 24 It has become clear that Barco is asking Yealink to agree
04:03:01 25 to terms it just cannot. At the same time, Yealink is

04:03:04 1 willing to admit to infringement and just put the issue of
04:03:09 2 liability in the rearview mirror and move on.

04:03:12 3 THE COURT: All right. I will hear from them in a
04:03:14 4 moment on that.

04:03:15 5 Tell me what you have produced in the way of
04:03:22 6 development documents. You've talked about documents
04:03:24 7 showing the timeline.

04:03:25 8 MR. YANG: Your Honor, I believe there are some
04:03:27 9 documents for the accused products about the timeline and
04:03:36 10 stages of development, and it makes references to what was
04:03:40 11 done, what was studied at each stage.

04:03:43 12 Now, I admit it has been some time ago, but it is
04:03:46 13 my belief we have produced those documents.

04:03:49 14 THE COURT: And do you contend that those
04:03:51 15 documents show development of your products before the
04:03:56 16 asserted patents were issued?

04:03:57 17 MR. YANG: I want to be accurate on that, Your
04:04:01 18 Honor, but the WPP20 dongle product, and I believe that is
04:04:08 19 a product whose development Barco is after, Your Honor,
04:04:12 20 yes, that product had been developed in 2017. It was
04:04:15 21 marketed in the U.S. in 2018.

04:04:18 22 The asserted -- the asserted patents were not
04:04:20 23 issued until 2020 and then on. And, again, they were not
04:04:25 24 marked until 2023.

04:04:32 25 THE COURT: All right.

04:04:33 1 MR. YANG: I want to be accurate. I think there
04:04:35 2 are some other products that are not dongles. I do not
04:04:39 3 recall exactly what the dates are, but we did provide the
04:04:41 4 development dates in our interrogatory responses.

04:04:48 5 THE COURT: All right. Thank you, Mr. Yang.

04:04:50 6 MR. YANG: Thank you, Your Honor.

04:04:51 7 THE COURT: Mr. Halverson, are you intending to
04:04:59 8 accept the offer that's been made to admit infringement of
04:05:07 9 all asserted claims by all accused products?

04:05:11 10 MR. HALVERSON: So we have not yet had the chance
04:05:14 11 to confer with Barco, who is a European company. We have
04:05:18 12 sent the proposal to them and have not heard back yet on
04:05:22 13 that request.

04:05:23 14 We have no opposition to the filing of a motion
04:05:25 15 for leave to enter that amended answer. But to the extent
04:05:33 16 there becomes an opposition to the motion -- or to the
04:05:37 17 answer itself later, we would reserve our right to oppose
04:05:40 18 that motion for leave.

04:05:41 19 But as of right now, no, Barco has no opposition
04:05:44 20 to Yealink filing its third amended answer with a motion
04:05:49 21 for leave to amend its answer.

04:05:51 22 THE COURT: I think that they're offering that
04:05:53 23 with the understanding that it will take care of the burden
04:06:01 24 of producing these technical documents.

04:06:10 25 And what do you say to the argument that they

04:06:15 1 could not have copied your patented technology if the
04:06:23 2 product was developed before the patents?

04:06:26 3 MR. HALVERSON: So there are, I think, two points
04:06:29 4 to that question, Your Honor.

04:06:30 5 The first is as far as whether or not that would
04:06:36 6 obviate the need for this discovery, it might -- it might
04:06:41 7 not. Part of the problem is we got this on Saturday night
04:06:44 8 from Yealink, and today is Tuesday afternoon. So there
04:06:47 9 hasn't been a lot of time to process what that is.

04:06:51 10 Had they wanted to do this, it could have been
04:06:53 11 done back in November when we were here last time.

04:06:56 12 Here we are in March still fighting about the
04:06:59 13 exact same things with Yealink still saying we're happy to
04:07:02 14 do this, we're happy to do that, we're happy to do this,
04:07:05 15 but it just doesn't happen.

04:07:07 16 Forgive me, Your Honor, I forgot the second half
04:07:15 17 of the question.

04:07:17 18 THE COURT: Well, you heard the description by
04:07:23 19 Mr. Yang as to the production of development documents and
04:07:27 20 the development timeline.

04:07:29 21 Do you dispute that?

04:07:31 22 MR. HALVERSON: So what I believe Mr. Yang is
04:07:34 23 referring to as far as the timeline is there is an
04:07:38 24 interrogatory response, not documents, that says the year
04:07:42 25 in which Yealink began developing each of its products, the

04:07:46 1 types of documents that they have produced -- can I turn
04:08:05 2 this -- on the other hand...

04:08:05 3 THE COURT: It's very sensitive to movement. As
04:08:08 4 soon as you get it placed, it'll be fine.

04:08:11 5 MR. HALVERSON: It's something like this. It's a
04:08:13 6 test report from a third-party agency describing the types
04:08:16 7 of tests that were run on a product. It has nothing to do
04:08:20 8 with what Yealink did. Nothing in this document describes
04:08:24 9 a Yealink engineer, how somebody at Yealink decided to
04:08:29 10 arrive at this design when they were aware of this product,
04:08:39 11 what it is that they did as far as figuring out the
04:08:42 12 functionality of what this thing needed to do when they
04:08:45 13 were aware of this product.

04:08:47 14 What it does do, it simply lists a bunch of things
04:08:55 15 that are not available, and it's pages and pages and pages
04:09:03 16 of that.

04:09:04 17 And so to the extent this is what Yealink does to
04:09:08 18 develop its products, I'm not sure what else we can do to
04:09:12 19 try to get this information from them. But in the years
04:09:15 20 that I've been litigating, this is not a developmental
04:09:18 21 document. This isn't a Yealink document. It's a
04:09:21 22 third-party document.

04:09:22 23 And so I -- I disagree with the contention on both
04:09:26 24 fronts, Your Honor, about whether or not the timeline or
04:09:29 25 the development documents have been produced.

04:09:37 1 And to the extent an agreement can be reached, you
04:09:43 2 know, as far as its implications on the rest of the case,
04:09:47 3 I've never seen somebody so afraid of providing development
04:09:52 4 discovery as I have in this case. I've never had somebody
04:09:55 5 else admit to infringement of every asserted claim in an
04:09:59 6 effort to avoid providing basic development documents or
04:10:02 7 source code access.

04:10:03 8 And so it's this constant fighting over the course
04:10:06 9 of the last seven months that leads us to think that
04:10:09 10 there's something there. Where that smoke is, there's
04:10:12 11 probably fire.

04:10:16 12 THE COURT: And I assume your argument is the same
04:10:20 13 for the source code issue?

04:10:22 14 MR. HALVERSON: For the source code issue, yes,
04:10:27 15 Your Honor.

04:10:27 16 THE COURT: What about the market research?

04:10:30 17 MR. HALVERSON: So that has bearing on damages as
04:10:36 18 far as what Yealink's expected position in the market is
04:10:40 19 for itself, Yealink's awareness of what Barco's position in
04:10:45 20 the market is, how it arrives at its pricing for its
04:10:49 21 products, things like that. I don't know that that would
04:10:52 22 be obviated by an amended answer, as Mr. Yang has been
04:10:57 23 discussing. I think that would still be relevant to what
04:11:00 24 needs to be -- or what needs to occur in the case.

04:11:05 25 I do think that the interrogatories on

04:11:10 1 non-infringement we can probably remove, to the extent that
04:11:12 2 kind of an arrangement is reached or that kind of answer is
04:11:16 3 entered, but I do think that the documents that could
04:11:20 4 support a copying finding -- I remember what the second
04:11:25 5 part of the question was -- but the documents that could
04:11:27 6 support a copying finding, as well as the documents
04:11:30 7 pertinent to damages, would still be relevant.

04:11:32 8 The second question was whether or not a -- the
04:11:36 9 timing of the development of the accused products happening
04:11:41 10 before Barco's patents issued would somehow remove the need
04:11:47 11 for this information. To the extent when Yealink developed
04:11:49 12 this, they were looking at this, and they were trying to
04:11:52 13 figure out exactly how to do this so that they could sell
04:11:56 14 this, regardless of when that happened, it's still evidence
04:12:00 15 that is relevant for a jury to consider when they're
04:12:03 16 evaluating damages and copying.

04:12:04 17 THE COURT: The copying of your unpatented product
04:12:16 18 is not evidence of willfulness, is it?

04:12:21 19 MR. HALVERSON: Copying of a patent practicing
04:12:24 20 product I think is evidence of willfulness.

04:12:29 21 THE COURT: Well, before the patent issues?

04:12:31 22 MR. HALVERSON: Well, there's certainly no willful
04:12:33 23 infringement that can occur before that, but to the extent
04:12:35 24 that design stemmed out of copying, yes, I do think that
04:12:39 25 that supports a finding of willfulness.

04:12:45 1 THE COURT: How is your product a patent
04:12:47 2 practicing product before the patent issues?

04:12:50 3 MR. HALVERSON: Well, of the patents in the case,
04:12:55 4 it's not. Of other patents in Barco's portfolio, it is.
04:13:01 5 And the willfulness inquiry is all about Yealink's state of
04:13:06 6 mind throughout that process. Part of that is did Yealink
04:13:10 7 intentionally infringe, but part of that also accounts for
04:13:16 8 whether or not Yealink was a -- I don't want to say bad
04:13:21 9 actor, but the development process of that was below board.

04:13:30 10 THE COURT: All right. Are there other issues on
04:13:33 11 your motion to compel?

04:13:35 12 MR. HALVERSON: Oh, the final is the redacted
04:13:42 13 sales information. So we've received 1,700 pages of
04:13:47 14 invoices, many of which are partially redacted. There's no
04:13:52 15 privilege claim for those invoices. There can't be.
04:13:57 16 They're from a third party sent to Yealink. The basis for
04:13:59 17 the redactions that we heard back was relevance, and
04:14:03 18 relevance is not a basis for redaction.

04:14:09 19 THE COURT: All right. And you indicated that the
04:14:12 20 Defendant had agreed to provide the sales data that is
04:14:19 21 addressed in the motion. Is this a different issue?

04:14:21 22 MR. HALVERSON: So there are two prongs to the
04:14:23 23 sales part of the motion. One is does Yealink have useable
04:14:29 24 sales data? What we got was the 1,700 pages of invoices
04:14:34 25 which would have to be tabulated. And there's no way of

04:14:37 1 verifying whether or not those 1,700 pages are the full
04:14:40 2 scope of what has -- what infringement has occurred.

04:14:43 3 The other is a spreadsheet or computer-generated
04:14:49 4 accounting-type software printout. Yealink has agreed to
04:14:53 5 provide the accounting printout. And I think that that
04:14:58 6 aspect of the motion to compel can be withdrawn if that is
04:15:01 7 produced. It still has not been produced, but we got a
04:15:04 8 representation that it was going to be produced.

04:15:06 9 But the redaction of the sales invoices, I don't
04:15:10 10 think, is obviated by the chart presentation -- or the
04:15:15 11 chart production, excuse me, because the content below
04:15:17 12 those boxes would allow Barco to verify what's in that
04:15:24 13 chart. And so we have no idea what's behind those black
04:15:27 14 boxes. For all we know it's 12 more WPP30s.

04:15:33 15 And so if what this sales spreadsheet is going to
04:15:36 16 be is simply Yealink's tabulation of the non-redacted
04:15:40 17 numbers, and then the redacted numbers are additional
04:15:43 18 accused products, we would have no way of knowing that.

04:15:47 19 So the invoices should be produced in an
04:15:51 20 unredacted form, and then the table should be produced so
04:15:54 21 that we can verify the table or verify what has already
04:15:57 22 been produced using that table.

04:16:02 23 THE COURT: All right. Thank you, Mr. Halverson.

04:16:10 24 MR. YANG: Your Honor, if it's okay with the
04:16:15 25 Court, may I address this redact the sales information

04:16:19 1 issue first?

04:16:19 2 THE COURT: Yes.

04:16:20 3 MR. YANG: Your Honor, Yealink makes a lot of
04:16:22 4 products. The majority of its products are related to
04:16:25 5 phones, IP phones. Those are the information in the
04:16:29 6 redacted sales invoices. We have made this very clear to
04:16:35 7 Barco.

04:16:36 8 And, Your Honor, I do not agree with Barco that a
04:16:40 9 party cannot redact wholly irrelevant information. This
04:16:46 10 idea that Barco has to verify, has to tabulate the
04:16:49 11 numbers -- now, during the parties' meet and confer on
04:16:53 12 February 20th, after the motion has been filed, we heard
04:16:56 13 for the first time that Barco wanted Yealink to produce
04:17:01 14 accounting information for its products.

04:17:05 15 The reason, Your Honor, we were told is Barco does
04:17:08 16 not want to go through the invoices and add everything up.
04:17:13 17 And as far as we know, it still has not done that. It has
04:17:16 18 not done the tabulations.

04:17:18 19 Coming back to the information from the accounting
04:17:22 20 system, we are producing that today. It may already be
04:17:26 21 produced within the past hour to two hours, and that
04:17:29 22 information, Your Honor, also had been provided months ago
04:17:33 23 in our interrogatory responses.

04:17:35 24 THE COURT: What is the basis for redacting what
04:17:40 25 you consider as irrelevant sales from the invoices?

04:17:44 1 MR. YANG: I think there are two bases, Your
04:17:48 2 Honor.

04:17:48 3 One, this sales information, again, for products
04:17:51 4 that have nothing to do with this case on the patents, they
04:17:55 5 do also belong to the third parties, Yealink's customers.

04:18:00 6 Second, Your Honor, there is the risk -- and,
04:18:04 7 again, it's -- it is a remote risk, but there is a risk of
04:18:08 8 inadvertent disclosure, and that is sensitive
04:18:11 9 information -- sensitive information, competitive
04:18:14 10 information for Yealink.

04:18:16 11 We're happy to provide copies for in camera
04:18:21 12 review, Your Honor, to verify that the redactions were
04:18:23 13 proper. But, Your Honor, because they are wholly
04:18:26 14 irrelevant and because there has not been any showing that
04:18:30 15 Yealink is somehow redacting relevant information, that is
04:18:34 16 an accusation, Your Honor, I -- it's, quite frankly,
04:18:38 17 offensive.

04:18:39 18 On this record, Your Honor, it is our position
04:18:42 19 that the production of the redacted information is not
04:18:47 20 necessary, especially when Barco has informed Yealink that
04:18:50 21 it prefers to have the accounting information so that it
04:18:54 22 can use it as a document, as a piece of evidence,
04:18:58 23 especially when Barco has not done the tabulation analysis
04:18:58 24 it needs to do, has not done the verification analysis it
04:19:05 25 needs to do with the unredacted invoices.

04:19:10 1 THE COURT: Well, explain the confidentiality of
04:19:17 2 sales invoices. I don't understand why -- even though the
04:19:25 3 products are sold to third parties, why there would be
04:19:29 4 confidential information there that can't be adequately
04:19:34 5 protected by the protective order.

04:19:36 6 MR. YANG: Your Honor, these are not public
04:19:38 7 documents. These have to do with the sales, the volume,
04:19:43 8 the number of orders for not only Yealink but also its
04:19:48 9 customers.

04:19:48 10 Barco is a competitor to Yealink in many aspects.
04:19:56 11 Your Honor, we understand --

04:19:56 12 THE COURT: Are you competitors on these other
04:19:59 13 products that you're worried about?

04:20:01 14 MR. YANG: As far as I know, not at this point,
04:20:03 15 but it is possible. Again, our understanding is Barco,
04:20:09 16 while primarily focuses on videoconferencing equipment, it
04:20:14 17 may be also developing other products that Yealink
04:20:17 18 currently manufactures.

04:20:20 19 THE COURT: Well, one way to resolve that, I am
04:20:27 20 not going to compare the redactions to the 1,700 pages of
04:20:33 21 invoices, but I don't mind saying that if you want to
04:20:39 22 protect them, you can allow a representative of the
04:20:45 23 Plaintiff to compare the unredacted to the redacted,
04:20:51 24 satisfy themselves that the redactions are proper, and not
04:20:56 25 keep the unredacted copies.

04:21:03 1 I'm not going to undertake that, but if the
04:21:07 2 Plaintiffs care enough about the potential for improper
04:21:13 3 redaction, I'll order that they be given access. And if
04:21:19 4 you want to have somebody present when they make that
04:21:23 5 comparison, I'll allow that, but...

04:21:28 6 MR. YANG: Thank you, Your Honor. And, no, it was
04:21:30 7 never our intention to add any burden for the Court, of
04:21:34 8 course.

04:21:34 9 I think, Your Honor, that is probably okay with us
04:21:40 10 if Barco is really concerned that Yealink is doing improper
04:21:43 11 redactions, that Yealink is somehow hiding information.
04:21:47 12 Yes, Your Honor, we're okay with that approach to have
04:21:50 13 somebody -- as long as it is outside counsel, of course, to
04:21:55 14 just review the documents and verify them.

04:21:59 15 THE COURT: All right.

04:22:05 16 MR. YANG: Coming back to, again, the technical
04:22:09 17 documents and Yealink's proposal to admit to the
04:22:14 18 infringement of all asserted claims, back in November, Your
04:22:20 19 Honor, when we first discussed this issue, this Court also
04:22:23 20 made the notes that if you really want to take technical
04:22:27 21 discovery off the board, then admit infringement of all
04:22:31 22 asserted claims.

04:22:31 23 And I agree with you that -- that that greatly
04:22:36 24 reduces technical discovery that they're entitled to.

04:22:40 25 THE COURT: Did I say that?

04:22:41 1 MR. YANG: Your Honor, yes. I am reading from the
04:22:46 2 transcript.

04:22:46 3 THE COURT: Well, I -- there are times when I
04:22:49 4 shouldn't interject, but --

04:22:56 5 MR. YANG: But, Your Honor, my point is this idea
04:23:00 6 that Yealink is hiding something, Yealink is trying to
04:23:04 7 streamline the case. It has already withdrawn the key
04:23:09 8 products, its dongle, from the U.S. market. The damages in
04:23:13 9 this case, Your Honor, are very limited. The infringement
04:23:16 10 period is very small.

04:23:18 11 Yealink is not trying to hide something. If that
04:23:21 12 is the case, Yealink would deny infringement and hide its
04:23:25 13 documents. Yealink is trying to move on. Yealink is
04:23:27 14 trying to save the expenses, save some time for the Court,
04:23:32 15 for the parties, move on to damages.

04:23:35 16 There's nothing new to Yealink's proposal.
04:23:38 17 Counsel has been talking about this. Yealink and Barco
04:23:41 18 have explored this for a long time. And, again, this is
04:23:44 19 something we mentioned in our response to the motion to
04:23:48 20 compel. Yealink had agreed to the terms that Barco had
04:23:54 21 proposed. Yealink had agreed to stipulate to the
04:23:58 22 infringement of -- of the dependent claims that Barco had
04:24:01 23 proposed.

04:24:03 24 We understand now that is a moving target.
04:24:07 25 Nevertheless, Yealink's intention to streamline this case

04:24:11 1 has been consistent.

04:24:13 2 THE COURT: Do you have a copy, Mr. Yang, of the
04:24:17 3 third amended answer that you referred to?

04:24:19 4 MR. YANG: Yes, Your Honor. We have a redline
04:24:22 5 copy showing changes over the previously filed second
04:24:26 6 amended answer, if that's okay with the Court, so the Court
04:24:29 7 can see all the changes.

04:24:30 8 THE COURT: And have you -- do you have a copy for
04:24:32 9 the Plaintiff, as well?

04:24:33 10 MR. YANG: We sent a copy to Plaintiffs already.

04:24:35 11 THE COURT: All right.

04:24:36 12 MR. YANG: But we also do have a copy today if the
04:24:40 13 Court wishes to review it.

04:24:43 14 THE COURT: I would like that review that, and
04:24:45 15 take a -- about a 10-minute recess to do that. And then
04:24:48 16 we'll come back and finish this up.

04:24:50 17 MR. YANG: Okay. Your Honor, may we approach?

04:24:53 18 THE COURT: Would you?

04:24:54 19 MR. YANG: Thank you.

04:24:55 20 THE COURT: Thank you.

04:25:00 21 All right. We will take a 10-minute recess.

04:25:02 22 Thank you.

04:25:02 23 MR. YANG: Thank you, Your Honor.

04:25:03 24 COURT SECURITY OFFICER: All rise.

04:25:04 25 (Recess.)

04:25:04 1 COURT SECURITY OFFICER: All rise.

04:25:05 2 THE COURT: Thank you. Please be seated.

04:37:26 3 Mr. Halverson, I have had a chance to look over
04:37:31 4 the proposed third amended answer, and it does appear to
04:37:40 5 admit infringement of the listed products.

04:37:48 6 Do you have a position that there are other
04:37:53 7 products of significance in the case that are not addressed
04:37:58 8 in the admissions in this answer?

04:38:00 9 MR. HALVERSON: No, Your Honor.

04:38:06 10 THE COURT: The only relevance that I can see of
04:38:13 11 further technical production, if this third amended answer
04:38:21 12 is filed, has to do with the possible effect of copying on
04:38:29 13 a willfulness claim, and even that is somewhat limited in
04:38:44 14 its effect.

04:38:45 15 But I do think that the Defendant makes a good
04:38:51 16 argument about the burden of that technical production and
04:38:58 17 the -- especially what resonates with me is to the extent
04:39:01 18 that the Plaintiff and Defendant are competitors,
04:39:06 19 disclosure of source code is always a touchy issue.

04:39:16 20 And so I'm inclined to say that I think that the
04:39:22 21 burden is not justified by the relevance.

04:39:31 22 If you have more evidence about the -- about the
04:39:46 23 support for the copying argument, you can tell me, but I
04:39:55 24 understand the smoke, but I don't know that I can really
04:40:03 25 rely on that to justify expensive production.

04:40:07 1 MR. HALVERSON: Understood, Your Honor. I think
04:40:11 2 the only response that exists is we don't know what we
04:40:14 3 don't know. And the only reason we don't know that is
04:40:18 4 because they haven't given us the routine technical
04:40:20 5 discovery.

04:40:22 6 And each of these amendments keep coming in
04:40:25 7 response to motions to compel. And so it's only when their
04:40:29 8 back is up against the wall do they try to get out of fact
04:40:33 9 discovery in a way that is court-facing.

04:40:38 10 So back in the fall of last year, we reached out.
04:40:41 11 We were looking for the same kind of technical documents.
04:40:43 12 We got an amended answer saying: We admit we infringe
04:40:46 13 Claim 1. Now we don't have to produce anything.

04:40:48 14 Came down here. We had this discussion. There
04:40:51 15 was an order. We spent another few months looking for
04:40:55 16 additional documents, waiting for compliance with the
04:40:58 17 Court's order. It didn't come. We reach out about our
04:41:04 18 dispute. We send our letter. And, again, as soon as it
04:41:08 19 gets down to the Court, we get another amendment.

04:41:12 20 And I don't know how to prove that they copied
04:41:15 21 without access to what it is that they did. And I don't
04:41:19 22 have any evidence because I've not been able to get any
04:41:24 23 evidence, Your Honor.

04:41:31 24 THE COURT: All right. Thank you, Mr. Halverson.

04:41:36 25 MR. YANG: Your Honor, may I respond?

04:41:39 1 THE COURT: Go ahead.

04:41:40 2 MR. YANG: Your Honor, I think what Mr. Halverson
04:41:44 3 just described is a fishing expedition. Also, this idea
04:41:51 4 that Yealink is somehow admitting because it's had its back
04:41:55 5 to the wall, ignores months of Yealink's attempt to come to
04:42:02 6 agreement, including Yealink agreeing to the very terms
04:42:07 7 Barco has offered. We reached an agreement before this
04:42:12 8 motion.

04:42:12 9 This second motion to compel, Your Honor, was
04:42:13 10 completely unnecessary, nor did the parties have the chance
04:42:19 11 to meet and confer.

04:42:20 12 This idea that Barco is entitled to see the -- to
04:42:28 13 verify that Yealink did not copy its products, there is no
04:42:33 14 evidence.

04:42:33 15 Earlier, by the way, we've heard this technical --
04:42:36 16 technical alliance, and I've heard that for the first time
04:42:39 17 this morning when Barco served some interrogatories on
04:42:43 18 that. As far as I know, there has been no document
04:42:47 19 production from Barco about this alliance. There's been
04:42:50 20 nothing.

04:42:51 21 And, Your Honor, I'm worried that Barco's using
04:42:55 22 motions as a way to apply pressure on Yealink, as a way to
04:43:02 23 maybe -- to portray that Yealink is a bad actor, that
04:43:06 24 Yealink violates the Court's orders before the jury.

04:43:09 25 None of this -- none of this evidence should be

04:43:13 1 admissible, but that is my concern, Your Honor, that there
04:43:15 2 could be some misuse of the discovery process.

04:43:17 3 THE COURT: Well, I am certainly not ascribing any
04:43:22 4 ill motive to the Plaintiff.

04:43:24 5 MR. YANG: That's not my intention either, Your
04:43:26 6 Honor, but there is concern coming from my clients.

04:43:30 7 THE COURT: All right. And do I understand now
04:43:36 8 that you will be filing the third amended answer this week?

04:43:42 9 MR. YANG: With the Court's leave, yes, Your
04:43:46 10 Honor.

04:43:46 11 THE COURT: All right. I hereby grant you leave
04:43:51 12 to do so. And I will withhold a ruling on the motion to
04:43:58 13 compel until that has been filed.

04:44:00 14 MR. YANG: Thank you, Your Honor.

04:44:01 15 THE COURT: I will say that -- I will order that
04:44:06 16 the unredacted sales invoices be made available for the
04:44:11 17 Plaintiff to review and return as discussed before, but
04:44:19 18 I'll withhold a ruling on the other aspects of the motion
04:44:23 19 to compel until after that answer is filed.

04:44:26 20 MR. YANG: Understood, Your Honor. Thank you.

04:44:29 21 THE COURT: Mr. Halverson?

04:44:30 22 MR. HALVERSON: May I?

04:44:31 23 So on the sales invoices, Your Honor --

04:44:35 24 THE COURT: Yes.

04:44:35 25 MR. HALVERSON: -- this is what's redacted. This

04:44:41 1 is not sensitive information. Nobody is able to copy a
04:44:46 2 product or develop a competing product from a line item on
04:44:50 3 an invoice.

04:44:51 4 And so while I agree it's within the Court's
04:44:54 5 discretion to order the production of this on a standalone
04:44:57 6 non-network computer under the protective order, it seems
04:45:01 7 like a little bit of an extreme remedy for something that
04:45:11 8 is at best seven words and a couple numbers.

04:45:13 9 THE COURT: Well, I'm giving you a chance to
04:45:15 10 verify the good faith of the Defendant in the way they've
04:45:19 11 redacted these. And if you find anything that you think is
04:45:28 12 not consistent with what has been portrayed as a good-faith
04:45:33 13 redaction of totally unrelated products, then I expect I'll
04:45:38 14 hear about it.

04:45:39 15 MR. HALVERSON: Yes, Your Honor.

04:45:41 16 THE COURT: All right.

04:45:42 17 MR. YANG: Your Honor, I just have a logistical
04:45:44 18 concern. This is the second time that counsel has shown
04:45:47 19 Yealink's confidential information on the screen. I don't
04:45:51 20 think that is making its way into the transcript, but I
04:45:53 21 just want to note that for the record. These documents,
04:45:57 22 including the document Mr. Halverson showed earlier, has
04:45:59 23 been marked as highly confidential.

04:46:03 24 THE COURT: All right. I do understand that,
04:46:05 25 although I think he was just doing it for a demonstrative

04:46:10 1 purpose that did not disclose any information.

04:46:12 2 MR. YANG: Okay.

04:46:13 3 THE COURT: But I note your objection to that.

04:46:16 4 MR. YANG: Thank you, Your Honor.

04:46:17 5 THE COURT: All right. Anything that we need to
04:46:21 6 put on the record further for the Plaintiff, Mr. Halverson?

04:46:25 7 MR. HALVERSON: No, Your Honor.

04:46:26 8 THE COURT: Mr. Yang?

04:46:27 9 MR. YANG: Your Honor, just -- I understand the
04:46:30 10 Court will issue its ruling on the second motion to compel.
04:46:33 11 I think there may be some other discovery issues, but the
04:46:38 12 parties are trying to work that out.

04:46:40 13 The one potential concern -- I just wanted to
04:46:42 14 raise this for the Court so the Court is aware -- fact
04:46:44 15 discovery closes on April 18th. Barco has noticed 26 -- or
04:46:50 16 demanded to take 26 depositions and has taken the position
04:46:54 17 that it will not provide the availability of its own
04:46:56 18 witnesses until Yealink has provided availability for the
04:47:00 19 26 witnesses.

04:47:01 20 We're trying to work that out, but there may be an
04:47:04 21 issue, given the timing, that we may need the Court's
04:47:08 22 assistance.

04:47:08 23 THE COURT: Well, I'm certainly amenable to
04:47:10 24 addressing things like timing by telephone. You can
04:47:15 25 coordinate a time with Ms. Andrews by calling chambers.

04:47:23 1 And if it's something that can be taken up that way, I
04:47:26 2 will. If we have to reconvene, we'll do that.

04:47:30 3 MR. YANG: Thank you, Your Honor.

04:47:31 4 THE COURT: All right.

04:47:32 5 MR. HALVERSON: Thank you, Your Honor.

04:47:32 6 THE COURT: Thank you.

04:47:33 7 We're adjourned.

04:47:35 8 COURT SECURITY OFFICER: All rise.

04:47:36 9 (Hearing concluded at 4:47 p.m.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
CERTIFIED SHORTHAND REPORTER
State of Texas No.: 7804
Expiration Date: 10/31/2025

3/20/2025
Date